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785 North 400 West
Salt Lake City, UT 84103
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Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

**THOMAS AMMONS, FELIX
BARELA, OSCAR GARCIA, DENNIS
NELSON, WADE PETERSON,
FRANK ROSS, HEIDI SCOTT,
MARILYN TOUCHARD, DUSTY
ALLEN, JASON ANDERSON, KIM
CREAGER, JEREMY GARCIA, ED
HERNANDEZ, FREDDY
HERNANDEZ, HEATH TAYLOR,
JAMIE BUTTARS, DELENA
SHEPHERD, BRENDA MOKUAU,
RYAN LISH, JIMMY HESS,
CAMERON SYCAMORE, ANNA LEE
and JARED HOWE**

Plaintiffs,

vs.

LA-Z-BOY INCORPORATED,

Defendant.

FILED
U.S. DISTRICT COURT
RECEIVED
2009 MAY -5 A 10:17
MAY 04 2009
DISTRICT CLERK
BY: OFFICE OF
DEPUTY CLERK **JUDGE TENA CAMPBELL**

ORDER ALLOWING
OVERLENGTH OPPOSITION
MEMORANDUM

Case Nos. 1-04-CV-67, 1:08-CV-133

Judge Tena Campbell
Magistrate Judge Sam Alba

Based on Plaintiffs' Motion to File an Overlength Opposition to La-Z-Boy's Motion for Summary Judgment Against Plaintiffs Wade Peterson, Heidi Scott and Jeremy Garcia (Doc. # 298, #299), and for good cause appearing therefore:

IT IS HEREBY ORDERED that Plaintiffs may file an overlength Opposition to La-Z-Boy's Motion for Summary Judgment Against Plaintiffs Wade Peterson, Heidi Scott and Jeremy Garcia (Doc. # 298, #299) of approximately 32 pages.

DATED this 4th day of May, 2009.

By the Court

A handwritten signature in black ink, reading "Tena Campbell". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

Honorable Judge Tena Campbell

Honorable Judge Samuel Alba

U:\CurrentClients\LZB Post Class\Pleadings\OrderOverlengthOppSJBankruptcy.wpd

FILED
U.S. DISTRICT COURT

2009 MAY -5 P 2:42

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

THOMAS W. ISRAEL,

Plaintiff,

vs.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

**PROPOSED ORDER FOR
ATTORNEY FEES UNDER THE
EQUAL ACCESS TO JUSTICE ACT**

Civil No. 1:07-CV-000094-DB

Honorable Dee Benson

Based upon the agreement of the parties as set forth in Defendant's Response to Plaintiff's Motion for Attorney Fees Under the Equal Access to Justice Act (EAJA), IT IS HEREBY ORDERED as follows:

1. The Defendant, the Commissioner of the Social Security Administration, will pay Thomas W. Israel ("Plaintiff") a total of six-thousand dollars (\$6,000.00) in attorney fees under EAJA, 28 U.S.C. § 2412.
2. This amount represents compensation for all legal services rendered on behalf of Plaintiff by his attorney(s) in connection with this civil action in accordance with 28 U.S.C. § 2412 (a) and (d) and bars any and all claims Plaintiff may have relating to EAJA fees and court costs in connection with this action.
3. This Order will not be used as precedent in any future cases.

DATED this 5th day of May, 2009.

BY THE COURT:


Honorable Dee Benson

David K. Broadbent, #0442
Mona L. Burton, #5399
Katherine N. Hansen, #9573
Holland & Hart LLP
60 E. South Temple, Suite 2000
Salt Lake City, Utah 84111-1031
Telephone: (801) 799-5895
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FILED
U.S. DISTRICT COURT
2009 MAY -5 A 9:55
DISTRICT OF UTAH
BY:
DEPUTY CLERK

Attorneys for Grubb & Ellis Realty Investors, LLC

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

VESCOR CAPITAL CORP., a Nevada corporation,
VESCOR CAPITAL, INC. a Nevada corporation,
VESCOP CAPITAL, LLC, a Nevada limited liability
company, VESCOP CAPITAL IV-A, LLC, a Nevada
limited liability company, VESCOP CAPITAL IV-M,
LLC, a Nevada limited liability company, and VAL E.
SOUTHWICK,

Defendant.

**ORDER VACATING
AMENDED SCHEDULING
ORDER**

**(Grubb & Ellis Motion for Relief
from Receivership Stay)**

Civil Action No. 1:08cv12

Judge Dee Benson

For the reasons stated in the Joint Stipulation and Motion to Vacate the Amended
Scheduling order and for good cause showing, it is hereby ordered that the Amended
Scheduling Order in this matter is VACATED

Dated this 4th day of May, 2009.

BY THE COURT:


Judge Dee Benson

FILED
U.S. DISTRICT COURT
2009 MAY -5 A 9:55
DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

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Attorneys for Receiver Robert G. Wing

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

VESCOR CAPITAL CORP., a Nevada
corporation, **VESCOR CAPITAL, INC.**,
a Nevada corporation, **VESCORP
CAPITAL, LLC**, a Nevada limited
liability company, **VESCORP CAPITAL
IV-A, LLC**, a Nevada limited liability
company, **VESCORP CAPITAL IV-M,
LLC**, a Nevada limited liability company,
and **VAL E. SOUTHWICK**,

Defendants.

**ORDER APPROVING
SETTLEMENT WITH
RONALD D. WELLS**

Case No. 1:08CV00012

Judge: Dee Benson

Based upon the Receiver's Motion for Approval of Settlement with Ronald D. Wells,
the Memorandum in support thereof and after having reviewed the Settlement Agreement
and General Release of All Claims, it is, hereby:

ORDERED, ADJUDGED AND DECREED as follows:

1. The Settlement Agreement and General Release of All Claims entered into by the Receiver on behalf of the defendants and Ronald D. Wells is APPROVED.

DATED this 4th day of May, 2009.


DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of May, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which sent notification of such filing to the following:

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mburton@hollandhart.com

Charles Lyons
Division of Securities
160 East 300 South, 2nd Floor
Salt Lake City, Utah 84111

/s/ Michelle T. Henderson

G:\VESCOR - MASTER FILE\Advisors Consultants and Sales
Agents\Iseminger, Ernest\Order Approving Ernest Iseminger
Settlement.doc

FILED
U.S. DISTRICT COURT

2009 MAY -5 A 9:55

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

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Attorneys for Receiver Robert G. Wing

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

VESCOR CAPITAL CORP., a Nevada
corporation, **VESCOR CAPITAL, INC.**,
a Nevada corporation, **VESCORP
CAPITAL, LLC**, a Nevada limited
liability company, **VESCORP CAPITAL
IV-A, LLC**, a Nevada limited liability
company, **VESCORP CAPITAL IV-M,
LLC**, a Nevada limited liability company,
and **VAL E. SOUTHWICK**,

Defendants.

**ORDER APPROVING
SETTLEMENT WITH ERNEST B.
ISEMINGER**

Case No. 1:08CV00012

Judge: Dee Benson

Based upon the Receiver's Motion for Approval of Settlement with Ernest B.

Iseminger, the Memorandum in support thereof and after having reviewed the Settlement

Agreement and General Release of All Claims, it is, hereby:

ORDERED, ADJUDGED AND DECREED as follows:

1. The Settlement Agreement and General Release of All Claims entered into by the Receiver on behalf of the defendants and Ernest B. Iseminger is APPROVED.

DATED this 4th day of May, 2009.

A handwritten signature in black ink, reading "Dee Benson". The signature is written in a cursive, flowing style. The first name "Dee" is written with a large, looped 'D'. The last name "Benson" is written in a more standard cursive script.

DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of May, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which sent notification of such filing to the following:

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/s/ Michelle T. Henderson

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Agents\Iseminger, Ernest\Order Approving Ernest Iseminger
Settlement.doc

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FILED
U.S. DISTRICT COURT

2009 MAY -5 A 9:55

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

Attorneys for Receiver Robert G. Wing

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

VESCOR CAPITAL CORP., a Nevada
corporation, **VESCOR CAPITAL, INC.**,
a Nevada corporation, **VESCORP
CAPITAL, LLC**, a Nevada limited
liability company, **VESCORP CAPITAL
IV-A, LLC**, a Nevada limited liability
company, **VESCORP CAPITAL IV-M,
LLC**, a Nevada limited liability company,
and **VAL E. SOUTHWICK**,

Defendants.

**ORDER APPROVING
SETTLEMENT WITH
PAUL AND KAREN BEARD**

Case No. 1:08CV00012
Judge: Dee Benson

Based upon the Receiver's Motion for Approval of Settlement with Paul and Karen Beard, the Memorandum in support thereof and after having reviewed the Settlement Agreement and General Release of All Claims, it is, hereby:

ORDERED, ADJUDGED AND DECREED as follows:

1. The Settlement Agreement and General Release of All Claims entered
into
by the Receiver on behalf of the defendants and Paul and Karen Beard is
APPROVED.

DATED this 4th day of May, 2009.



DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of May, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which sent notification of such filing to the following:

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Salt Lake City, Utah 84111

/s/ Michelle T. Henderson

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UNITED STATES DISTRICT COURT
U.S. DISTRICT COURT

NORTHERN

District of

UTAH

UNITED STATES OF AMERICA

2009 MAY -5 A 10:45

JUDGMENT IN A CRIMINAL CASE

V.

DISTRICT OF UTAH

Angel Martinez-Medel

BY: DEPUTY CLERK

Case Number:

DUTX 1:09CR00013-001 TC

USM Number:

15894-081

Amie Williamson

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) One of the Indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
8 USC § 1326	Reentry of a Previously Removed Alien		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

04/30/2009

Date of Imposition of Judgment

Tena Campbell
Signature of Judge

Tena Campbell

Chief, United States District Court Judge

Name and Title of Judge

5-2-2009
Date

DEFENDANT: Angel Martinez-Medel
CASE NUMBER: 2:09CR00013-001 TC

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

8 Months, with credit for time served - which the Court recommends from 12/10/2008.

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Angel Martinez-Medel
CASE NUMBER: 1:09CR00013-001 TC

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

12 Months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☒ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Angel Martinez-Medel
CASE NUMBER: 1:09CR00013-001 TC

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not illegally reenter the United States.

DEFENDANT: Angel Martinez-Medel
CASE NUMBER: 1:09CR00013-001 TC

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	--------------------	----------------------------	-------------------------------

TOTALS	\$ _____ 0	\$ _____ 0
--------	------------	------------

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Angel Martinez-Medel
CASE NUMBER: 1:09CR00013-001 TC

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10

are the
Statement of Reasons,
which will be docketed
separately as a sealed
document

FILED
U.S. DISTRICT COURT

Central

2009 MAY - 5 A 10 46

Utah

UNITED STATES OF AMERICA
V.

JUDGMENT IN A CRIMINAL CASE
(For Revocation of Probation or Supervised Release)

BY: DEPUTY CLERK

Everett Edward Carlton

Case Number: DUTX 2:00CR00500-001 TC

USM Number: 08280-081

Tiffany Johnson
Defendant's Attorney

THE DEFENDANT:

☒ admitted guilty to violation of condition(s) 1, 2 and 3 of the Petition of the term of supervision.

☐ was found in violation of condition(s) after denial of guilt.

The defendant is adjudicated guilty of these violations:

Violation Number	Nature of Violation	Violation Ended
1.	On or about 2/11 and 3/15/2009, the defendant failed to notify the USPO within 72 hours of contact with law enforcement.	
2.	On or about 3/26/2009, the defendant failed to submit to drug testing, as directed by the USPO.	
3.	On or about 3/29/2009, the defendant used a controlled substance, to wit: methamphetamine.	

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has not violated condition(s) and is discharged as to such violation(s) condition.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Defendant's Soc. Sec. No.: _____

04/30/2009

Date of Imposition of Judgment

Defendant's Date of Birth: _____

Tena Campbell
Signature of Judge

Defendant's Residence Address: _____

Tena Campbell Chief, United States District Court Judge
Name and Title of Judge

5-2-2009
Date

Defendant's Mailing Address: _____

DEFENDANT: Everett Edward Carlton
CASE NUMBER: 2:00CR00500-001 TC

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of :

4 months, with credit for time served

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____ with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Everett Edward Carlton
CASE NUMBER: 2:00CR00500-001 TC

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

36 Months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is be a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Everett Edward Carlton
CASE NUMBER: 2:00CR00500-001 TC

SPECIAL CONDITIONS OF SUPERVISION

The previously imposed special conditions are reinstated:

1. The defendant shall participate in drug and/or alcohol aftercare treatment under a co-payment plan as directed by the USPO.
2. As directed by the probation office, the defendant will submit to drug/alcohol testing, and pay an initial \$115 fee and additional costs associated with confirmation testing of positive results.
3. The defendant shall refrain from incurring new credit charges or opening additional lines of credit unless he is in compliance with the established payment schedule and obtains the approval of the probation office.
4. The defendant shall provide the probation officer access to all requested financial information.
5. The defendant shall maintain full-time verifiable employment or participate in academic or vocational development throughout the term of supervision as deemed appropriate by the USPO.
6. The defendant shall submit his person, residence, office, or vehicle to a search, conducted by a USPO at a reasonable time and in a reasonable manner based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

Plus the following additional conditions:

7. The defendant shall successfully complete an inpatient drug treatment program, **OR** The defendant is placed on 4 months home confinement with electronic monitoring. The defendant shall participate in a location monitoring program for a period of 4 months, which may include electronic or non-electronic means, i.e., global positioning satellite tracking (GPS), radio frequency, voice verification tracking, or other services as determined by the probation office. The defendant is restricted to his residence at all times, except for activities pre-approved by the probation office. The defendant shall pay \$ ___ per day, to partially defray the costs of the program (Cost per day to be determined by the US Probation Officer).

United States District Court
for the District of Utah

Petition and Order for Summons for Offender Under Supervision

Name of Offender: **Robert Keesler**

Docket Number: **2:04-CR-00456-001-DB**

Name of Sentencing Judicial Officer: **Honorable Dee Benson**
United States District Judge

FILED
U.S. DISTRICT COURT
2009 MAY 5 A 10:19
DISTRICT OF UTAH
BY: DEPUTY CLERK

Date of Original Sentence: **August 11, 2005**

Original Offense: **Felon in Possession of a Firearm**

Original Sentence: **27 Months BOP Custody/36 Months Supervised Release**

Type of Supervision: **Supervised Release** Supervision Began: **May 24, 2007**

PETITIONING THE COURT

☒ To issue a summons 348 West 1430 South
Payson, Utah 84651

CAUSE

The probation officer believes that the offender has violated the conditions of supervision as follows:

Allegation No. 1: On April 21, 2009, the defendant committed another federal, state, or local crime, to wit: Theft by Receiving Stolen Property and Possession of Drug Paraphernalia in a Drug-Free Zone.

Evidence in support of this is an Incident Report (09AF03825) prepared by the American Fork City Police Department.

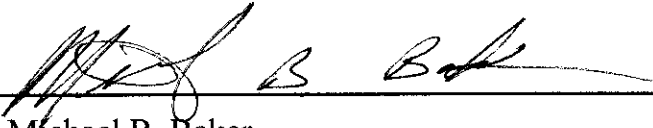
Allegation No. 2: On April 21, 2009, the defendant associated with a convicted felon.

Evidence in support of this is an Incident Report (09AF03825) prepared by the American Fork City Police Department.

Allegation No. 3: On April 21, 2009, the defendant possessed drug paraphernalia.

Evidence in support of this is an Incident Report (09AF03825) prepared by the American Fork City Police Department.

I declare under penalty of perjury that the foregoing is true and correct.


Michael B. Baker
U.S. Probation Officer
Date: April 30, 2009

THE COURT ORDERS:

- ☒ The issuance of a summons
- ☐ The issuance of a warrant
- ☐ No action
- ☐ Other

5/5/09

Honorable Dee Benson
United States District Judge
Date: Dee Benson

United States District Court
for the
District of Utah
May 5, 2009

*****MAILING CERTIFICATE OF THE CLERK*****

RE: USA v. Keesler
2:04cr00456-001 DB

Cindy Dobyns
US ATTORNEY'S OFFICE (UT)

Julie Watters
US ATTORNEY'S OFFICE (UT)

Kathy Paraskeva
US PROBATION OFFICE (UT)

A handwritten signature in black ink, appearing to read "Ryan Robertson", is written over a light blue rectangular background.

Ryan Robertson,

FILED
U.S. DISTRICT COURT

2009 MAY -4 P 3:27

DISTRICT CLERK

BY: 

U.S. DISTRICT COURT

JILL L. DUNYON (5948)
KENNETH L. REICH (8578)
SNOW, CHRISTENSEN & MARTINEAU
Attorneys for Thermal West Industrial, Inc.
10 Exchange Place, Eleventh Floor
Post Office Box 45000
Salt Lake City, Utah 84145
Telephone: (801) 521-9000
Fax No.: (801) 363-0400

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CONNIE BACHMAN, Individually, and as
Personal Representative on behalf of the
Legal Heirs of ROBERT RYLAND
BACHMAN, Deceased,

Plaintiff,

vs.

FRED MEYER STORES, INC.,
BULLOUGH ABATEMENT, INC.
MOUNTAIN STATES INSULATION
SUPPLY CO., INC., THERMAL WEST
INDUSTRIAL, INC.,

Defendants.

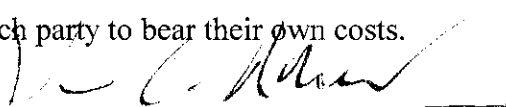
**ORDER OF DISMISSAL WITH
PREJUDICE OF DEFENDANT
THERMAL WEST INDUSTRIAL, INC.**

MDL Docket No. 875
The Honorable Eduardo C. Robreno

Civil No. 2:05-cv-276

BASED UPON the stipulation of the parties and good cause appearing therefor,

IT IS HEREBY ORDERED that the Plaintiff's claims against Thermal West Industrial,
Inc. in this action are dismissed, with prejudice, each party to bear their own costs.


Eduardo C. Robreno
4/14/09

United States District Court

FILED
U.S. DISTRICT COURT

2009 MAY -5 A 10:19

DISTRICT OF UTAH

UNITED STATES OF AMERICA
v.BY: _____
ORDER SETTING DEPUTY CLERK
CONDITIONS OF RELEASE

Travis Adolpho Hards

Case Number: 2:07-CR-908-001 DB

IT IS SO ORDERED that the release of the defendant is subject to the following conditions:

- (1) The defendant shall not commit any offense in violation of federal, state or local or tribal law while on release in this case.
- (2) The defendant shall immediately advise the court, defense counsel and the U.S. attorney in writing of any change in address and telephone number.
- (3) The defendant shall appear at all proceedings as required and shall surrender for service of any sentence imposed as directed. The defendant shall next appear at (if blank, to be notified) _____

PLACE

on _____

DATE AND TIME

Release on Personal Recognizance or Unsecured Bond

IT IS FURTHER ORDERED that the defendant be released provided that:

- (✓) (4) The defendant promises to appear at all proceedings as required and to surrender for service of any sentence imposed.
- () (5) The defendant executes an unsecured bond binding the defendant to pay the United States the sum of _____

dollars (\$) _____

in the event of a failure to appear as required or to surrender as directed for service of any sentence imposed.

Additional Conditions of Release

Upon finding that release by one of the above methods will not by itself reasonably assure the appearance of the defendant and the safety of other persons and the community, it is FURTHER ORDERED that the release of the defendant is subject to the conditions marked below:

- () (6) The defendant is placed in the custody of:
(Name of person or organization)
(Address)
(City and state) (Tel.No.)

who agrees (a) to supervise the defendant in accordance with all the conditions of release, (b) to use every effort to assure the appearance of the defendant at all scheduled court proceedings, and (c) to notify the court immediately in the event the defendant violates any conditions of release or disappears.

Signed: _____
Custodian or Proxy

- () (7) The defendant shall:
- (X) (a) maintain or actively seek employment.
 - () (b) maintain or commence an educational program.
 - (X) (c) abide by the following restrictions on his personal associations, place of abode, or travel:
Maintain residence and do not change without prior permission of the pretrial officer.
 - () (d) avoid all contact with the following named persons, who are considered either alleged victims or potential witnesses:
 - (X) (e) report on a regular basis to the supervising officer as directed.
 - (X) (f) comply with the following curfew: **As directed by the pretrial officer.**
 - (X) (g) refrain from possessing a firearm, destructive device, or other dangerous weapon.
 - () (h) refrain from excessive use of alcohol.
 - (X) (i) refrain from any use or unlawful possession of a narcotic drug and other controlled substances defined in 21 U.S.C. §802 unless prescribed by a licensed medical practitioner.
 - () (j) undergo medical or psychiatric treatment and/or remain in an institution, as follows:
 - () (k) execute a bond or an agreement to forfeit upon failing to appear as required, the following sum of money or designated property
 - () (l) post with the court the following indicia of ownership of the above-described property, or the following amount or percentage of the above-described money:
 - () (m) execute a bail bond with solvent sureties in the amount of \$
 - () (n) return to custody each (week)day as of _____ o'clock after being released each (week)day as of _____ o'clock for employment, schooling or the following limited purpose(s):
 - () (o) surrender any passport to
 - (X) (p) obtain no passport
 - (X) (q) the defendant will submit to drug/alcohol testing as directed by the pretrial office. If testing reveals illegal drug use, the defendant shall participate in drug and/or alcohol abuse treatment, if deemed advisable by supervising officer.
 - () (r) participate in a program of inpatient or outpatient substance abuse therapy and counseling if deemed advisable by the supervising officer.
 - (X) (s) submit to an electronic monitoring program as directed by the supervising officer.
 - (X) (t) Abide by all the conditions as listed in the attached Standard Conditions of Probation.

Advice of Penalties and Sanctions

TO THE DEFENDANT:

YOU ARE ADVISED OF THE FOLLOWING PENALTIES AND SANCTIONS:

A violation of any of the foregoing conditions of release may result in the immediate issuance of a warrant for your arrest, a revocation of release, an order of detention, and a prosecution for contempt of court and could result in a term of imprisonment, a fine, or both.

The commission of a Federal offense while on pretrial release will result in an additional sentence of a term of imprisonment of not more than ten years, if the offense is a felony; or a term of imprisonment of not more than one year, if the offense is a misdemeanor. This sentence shall be in addition to any other sentence.

Federal law makes it a crime punishable by up to 10 years of imprisonment, and a \$250,000 fine or both to obstruct a criminal investigation. It is a crime punishable by up to ten years of imprisonment and a \$250,000 fine or both to tamper with a witness, victim or informant; to retaliate or attempt to retaliate against a witness, victim or informant; or to intimidate or attempt to intimidate a witness, victim, juror, informant, or officer of the court. The penalties for tampering, retaliation, or intimidation are significantly more serious if they involve a killing or attempted killing.

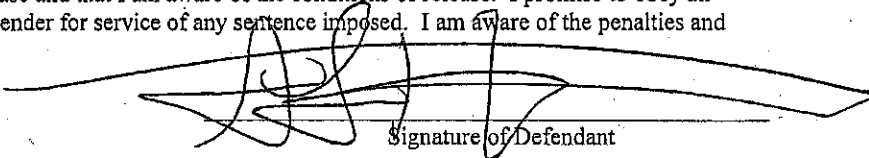
If after release, you knowingly fail to appear as required by the conditions of release, or to surrender for the service of sentence, you may be prosecuted for failing to appear or surrender and additional punishment may be imposed. If you are convicted of:

- (1) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more, you shall be fined not more than \$250,000 or imprisoned for not more than 10 years, or both;
- (2) an offense punishable by imprisonment for a term of five years or more, but less than fifteen years, you shall be fined not more than \$250,000 or imprisoned for not more than five years, or both;
- (3) any other felony, you shall be fined not more than \$250,000 or imprisoned not more than two years, or both.
- (4) a misdemeanor, you shall be fined not more than \$100,000 or imprisoned not more than one year, or both.

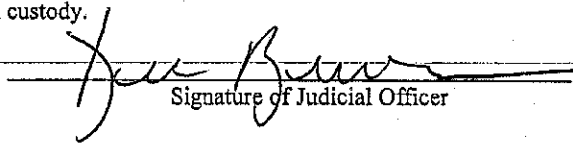
A term of imprisonment imposed for failure to appear or surrender shall be in addition to the sentence for any other offense. In addition, a failure to appear or surrender may result in the forfeiture of any bond posted.

Acknowledgment of Defendant

I acknowledge that I am the defendant in this case and that I am aware of the conditions of release. I promise to obey all conditions of release, to appear as directed, and to surrender for service of any sentence imposed. I am aware of the penalties and sanctions set forth above.


Signature of Defendant_____
Address_____
City and State_____
Telephone**Directions to the United States Marshal**

- () The defendant is ORDERED released after processing.
- () The United States marshal is ORDERED to keep the defendant in custody until notified by the clerk or judicial officer that the defendant has posted bond and/or complied with all other conditions for release. The defendant shall be produced before the appropriate judicial officer at the time and place specified, if still in custody.

Date: May 4, 2009
Signature of Judicial Officer_____
Honorable Dee Benson_____
Name and Title of Judicial Officer

MANDATORY CONDITIONS OF SUPERVISION

- X The defendant shall not commit another federal, state or local crime.
- X The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance.

After sentencing, mark all that apply:

- x The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
- x The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
- x The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.
- x The defendant shall submit to the collection of DNA as directed by the probation officer.
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer.
- The defendant shall participate in an approved program for domestic violence.

STANDARD CONDITIONS OF SUPERVISION

- (1) The defendant shall not leave the judicial district without the permission of the Court or probation officer;
- (2) The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- (3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- (4) The defendant shall support his or her dependants and meet other family responsibilities;
- (5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- (6) The defendant shall notify the probation officer ten days prior to any change in residence or employment;
- (7) The defendant shall refrain from ^{ANY} ~~excessive~~ use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substance, except as prescribed by a physician;
- (8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- (9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- (10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere, and shall permit confiscation of any contraband observed in plain view by the probation officer;
- (11) The defendant shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer;
- ~~(12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the Court; and~~
- (13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm your compliance with such notification requirement.

FILED
U.S. DISTRICT COURT

2009 MAY -5 A 10:17

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

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Facsimile: (216) 515-1650

Attorneys for Rubbermaid Incorporated

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

JOHN AND TAMARA TOLMAN, et al.,

Plaintiffs,

v.

RUBBERMAID, INC.,

Defendant.

ORDER
GRANTING EXTENSION OF TIME TO
COMPLETE EXPERT DISCOVERY

Case No. 2:07CV277

Judge Clark Waddoups


U.S. Magistrate Judge David Nuffer

Upon consideration of the stipulation of the Parties, and good cause appearing therefore,

IT IS HEREBY ORDERED that all parties may have an extension of up to and including
June 30, 2009, within which to complete expert discovery.

DATED this 4th day of May, 2009.

BY THE COURT:


Judge Clark Waddoups
District Court Judge

Approval as to Form:

THE ANDERSON LAW FIRM

/s/ Hank Anderson

Hank Anderson

Gant A. Grimes

The Anderson Law Firm

4600 Belair.

Wichita Falls, TX 76310

*Electronically signed with permission
from Hank Anderson*

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

MARGAE, INC., Plaintiff, vs. CLEAR LINK TECHNOLOGIES, LLC, et al., Defendants.	ORDER and MEMORANDUM DECISION Case No. 2:07-CV-916 CW
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Clear Link Technologies, LLC has moved for a judgment on the pleadings on Margae's claims for conversion, unjust enrichment and a violation of the Utah Unfair Competition Act. These claims are set forth in the sixth, seventh and eighth claims for relief in the First Amended Complaint. Clear Link has not moved to dismiss Margae's remaining claims. Because the court has extensively discussed most of the relevant facts in this case in previous orders, only the key facts will be discussed below.

ANALYSIS

I. Judgment on the Pleadings Standards

A motion for judgment on the pleadings is analyzed as a Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be granted. See Atlantic Richfield Co. v. Farm Credit Bank of Wichita, 226 F.3d 1138, 1160 (10th Cir. 2000). When evaluating such a motion, the court presumes the truth of all well-pleaded facts in the complaint, but need not consider

conclusory allegations. Tal v. Hogan, 453 F.3d 1244, 1252 (10th Cir. 2006), cert. denied, 127 S. Ct. 1334 (2007); Mitchell v. King, 537 F.2d 385, 386 (10th Cir. 1976). Conclusory allegations are allegations that “do not allege the factual basis” for the claim. Brown v. Zavaras, 63 F.3d 967, 972 (10th Cir. 1995). See also Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991) (“[C]onclusory allegations without supporting factual averments are insufficient to state a claim on which relief can be based.”). The court is not bound by a complaint’s legal conclusions, deductions and opinions couched as facts. See Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1964-65 (2007). Further, though all reasonable inferences must be drawn in the non-moving party’s favor, Tal, 453 F.3d at 1252, a complaint will only survive a motion to dismiss if it contains “enough facts to state a claim to relief that is plausible on its face.” Twombly, 127 S. Ct. at 1969, quoted in Ridge at Red Hawk, LLC v. Schneider, 493 F.3d 1174, 1177 (10th Cir. 2007).

II. Are the Claims at Issue Preempted by the Utah Trade Secrets Act?

First, Clear Link argues that Margae’s conversion, unjust enrichment, and unfair competition claims are preempted by the Utah Trade Secrets Act (“UTSA”).¹ Margae does not dispute that the UTSA would preempt these causes of action if the court found that the subject matter of these claims was entitled to trade secret protection. But Margae contends that by dismissing its claim for trade secret misappropriation, it has preserved its claims from preemption. Margae is incorrect.

¹ Clear Link also argued in its reply brief that these claims are preempted by the federal copyright act. While the court sees potential merit in this argument, it will not address it in this Order because it was made in reply.

Under any reasonable reading of the amended complaint, there is no question that Margae has plead that the subject matter of this litigation was trade secret information. Specifically, Margae defines the term “Margae’s work” to mean Margae’s “own constellation of confidential and proprietary web sites, web pages, systems, materials, information and techniques.” (Amended Compl. ¶12.) In turn, Margae alleges in Paragraph 12 that “Margae’s work” “collectively consitute[s] Margae’s trade secrets. Margae makes reasonable efforts to keep its trade secrets proprietary and confidential.” (Id.) Further, it is clear that “Margae’s work” is the subject matter Margae’s unfair competition, conversion and unjust enrichment claims. (See Amended Compl. ¶¶ 84, 90 & 95 (each referring to “Margae’s work” as the subject matter of the claim).) Accordingly, the amended complaint unmistakably alleges that the subjects of each claim are trade secrets.

Interestingly, given the posture of this case, the reading most favorable to Margae would be to ignore Margae’s allegation that “Margae’s work” is comprised of trade secrets. But the court will not do so. Nor does the court believe that simply dismissing the UTSA claim is enough to avoid preemption. While the claim itself is now gone, the amended complaint clearly alleges the factual predicate required to find that “Margae’s work” is trade secret information. As currently plead, then, Margae’s sixth, seven and eighth claims are all preempted by the UTSA. However, the court will allow Margae an opportunity to amend its complaint, now that Margae has dropped its trade secret claim.²

² Clear Link argues that Margae has made a judicial admission that Margae considers each item in the definition of “Margae’s work” to be a trade secret, making amendment futile. While this argument may have merit, the court will reserve judgment on it until Margae files an amended complaint (if any) and Clear Link responds.

III. Merits of the Claims

In addition to preemption, Clear Link asserts alternative grounds for dismissal of Margae's unfair competition and conversion claims. While these grounds are mooted as a practical matter because the court has granted leave to amend, the court will nonetheless discuss these grounds to give the parties guidance in future filings.

A. Unfair Competition

Margae brings its unfair competition claim under the Utah Unfair Competition Act ("UUCA"). The type of "unfair competition" alleged by Margae is "cyber terrorism" "Cyber terrorism" is defined, in part, as "willfully communicating, delivering, or causing the transmission of a program, code, or command without authorization or exceeding authorized access" which "leads to a material diminution in value of intellectual property." Utah Code Ann. § 13-5a-102(2)(c) & 102(4). Margae contends in its amended complaint that Clear Link's unauthorized use of its web pages lead to the diminution of those web pages' value because Margae was deprived of the commissions it was owed from their use. Clear Link responds that this allegation does not state a claim for "cyber terrorism" because the "program, code or command" sent by a defendant must be different than the target "intellectual property."

The court agrees with Clear Link. The UUCA clearly requires that the transmitted "program, code or command" must be different from the damaged "intellectual property." That is, by using the term "cyber terrorism," the legislature signaled that it meant to cover only a situation where the "program, code or command" was the tool for an attack and the "intellectual property" was the target of an attack. Had the legislature wanted to define "cyber terrorism" as the unauthorized use of intellectual property, it could have easily done so. When, as here, the

plain meaning of the statute is unambiguous, the court need not consider other sources in construing the statute. See Otter Creek Reservoir Co. v. New Escalante Irrigation Co., 203 P.3d 1015, 1018 (Utah 2009).

Accordingly, as it is currently plead, Margae's UUCA claim should be dismissed. It is worth nothing that Margae has argued that Clear Link's actions meet the definition of "cyber terrorism" because Clear Link's unauthorized use of Margae's Clear Link-related web pages damages the value of Margae's non-Clear Link web pages and web sites. The court will not consider this argument, because it is not tied to any express allegation that Margae made in its complaint. Further, this argument cannot be inferred from reading the amended complaint in Margae's favor. As noted above, however, Margae may amend its complaint to make this factual allegation clear and Clear Link is free to challenge whether such an allegation meets the definition of "cyber terrorism."

B. Conversion

Clear Link argues that Margae's conversion claim fails because "Margae's work" is intangible property and such property cannot be the subject of a Utah law conversion claim. Margae responds that Utah law would allow a claim for conversion of intangible property, and that in any event, web pages are tangible property. Neither party cites any directly on-point Utah authority and these questions have not been answered by Utah courts. Accordingly, the question becomes how the Utah Supreme Court would resolve these issues. See Hartford Acc. & Indem. Co. v. U.S. Fidelity and Guar. Co., 962 F.2d 1484, 1487 (10th Cir.1992) ("In such a case of first impression, our responsibility is to give the clause the interpretation we believe the Utah court would.").

First, the court is convinced that Utah would not allow a conversion claim for intangible intellectual property. An expansion of conversion liability to cover intangible property does not appear likely in a state that follows the Restatement (Second) of Torts for guidance. See, e.g., Jones v. Salt Lake City Corp., 78 P.3d 988, 992 (Utah 2003) (citing to Restatement (Second) of Torts). That is because the Restatement generally limits conversion actions involving intangible property to intangible property that is “customarily merged in a document.” Restatement (Second) of Torts § 242(2). Margae’s citation to Kremen v. Cohen, 337 F.3d 1024, 1026-36 (9th Cir. 2003) to argue otherwise is not persuasive because that court supported its decision on California law with various California cases. Utah case law does not appear to have followed a similar path to California on this question. Thus, to the extent that Margae alleges conversion of intangible property, such as techniques and information, its claims fail.

Margae centers its argument on this point to a contention that its web pages are subject to a conversion claim under Utah law. If the web pages were intangible, as Clear Link argues, they would not meet requirements of the merger doctrine, and thus not be capable of being converted. That is, while web pages are capable of being merged into a document, it is not customary to do so. Nor is there anything meaningful about printing out a web page as compared to a situation where creating a tangible document is significant, such as in the case of a stock certificate or a promissory note. See Restatement (Second) Torts § 242, cmt. b. Accordingly, if web pages were intangible, they would not be subject to a conversion action under Utah law.

But contrary to Clear Link’s assertion that web pages are intangible, the court believes that Utah would consider web pages as a type of tangible property. One Utah case, while not directly on point, supports this conclusion. In South Central Utah Telephone Assoc., Inc. v.

Auditing Div. of the Utah State Tax Comm'n, 951 P.2d 218, 223-24 (Utah 1997), the Utah

Supreme Court held that software is “tangible personal property” for tax purposes, even after it has been installed on the computer. The court reasoned that:

Software is information recorded in a physical form which has a physical existence, takes up space on the tape, disc, or hard drive, makes physical things happen, and can be perceived by the senses. The purchaser of computer software neither desires nor receives mere knowledge but an arrangement of matter that will direct a computer to perform a particular function.

(Id.)

Like the “software” discussed in South Central Utah Telephone, a web page has a physical presence on computer drive, causes tangible effects on computers, and can be perceived by the senses. As stated by the federal district court in Astroworks, Inc. v. Astroexhibit, Inc., 257 F. Supp. 2d 609, 618 (S.D.N.Y. 2003), a website is “an idea reduced to practice.” Further, web pages can be physically altered by authorized users and access to web pages can be physically restricted by the use of passwords and other security measures. In fact, the “conversion” alleged here is that Clear Link has “locked out” Margae’s access to web pages.

Moreover, as a practical matter, the Utah courts’ pronouncements to date indicate that Utah’s conversion law would be applied to a web page. In Jones, the court defined conversion as “an act of wilful interference with a chattel, done without lawful justification by which the person entitled thereto is deprived of its use and possession.” 78 P.3d at 992 (citation omitted). Here, Clear Link is alleged to have made it physically impossible for Margae to access the web pages at issue, depriving Margae of their use and possession.

By contrast, it would be nonsensical to apply this definition of conversion to something that was truly intangible, such a song. That is because a song, once memorized, can be “stored”

in a person's mind. Once the song is in a person's mind, there is no way that someone else could "deprive" that person's "use and possession" of the song. Of course, a handwritten original copy of the song or a recorded version of the song could be converted. But the song itself could not.

Similarly, there is a distinction between the information displayed on the web page, which is intangible, and the web page itself, which acts as the medium for transmitting the information. The allegation here is that Clear Link took virtual possession of web pages, thereby depriving Margae the right to control the use of the media. The fact that Clear Link could allegedly take control of the web pages and preclude access to Margae demonstrates that it has the characteristics of tangible property and can be converted.

In sum, the court finds that a web page could be the subject of a conversion claim under Utah law because it is tangible property.

ORDER

For the reasons set forth above, Clear Link's Motion for Judgment on the Pleadings (Dkt. No. 78) is GRANTED. Margae is granted 10 days from the entry of this Order to amend its complaint.

SO ORDERED this 4th day of May, 2009.

BY THE COURT:



Clark Waddoups
United States District Judge

JOSHUA M. BOWLAND (10075)
ATTORNEY FOR DEFENDANT
341 S. Main St., Suite 406
Salt Lake City, Utah 84111
Tel.801.746.4044
Fax.801.746.5613
joshbowland@aol.com

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,	)	ORDER TO CONTINUE SENTENCING
)	
vs.)	
)	
GUADALUPE MARTINEZ-CARRANZA,	)	Case No. 2:08cr366
)	
Defendant.)	
	)	Honorable Judge Dee Benson

Based upon the motion filed by Defendant to continue the original sentencing date:

IT IS ORDERED that Sentencing set on May 5, 2009 at 2:30 p.m., be continued.

IT IS FURTHER ORDERED that this Court will set another sentencing date in this matter.

DATED this 5 day of May, 2009.

BY THE COURT:



Honorable Judge Dee Benson

NEW SENTENCING DATE IS JUNE 16, 2009 @ 2:00 PM

FILED
U.S. DISTRICT COURT

2009 MAY -5 A 10:17

DISTRICT OF UTAH

BY: ~~DEPUTY CLERK~~

RECEIVED

IN THE UNITED STATES DISTRICT COURT

MAY 04 2009

DISTRICT OF UTAH, CENTRAL DIVISION

OFFICE OF
JUDGE TENA CAMPBELL

UNITED STATES OF AMERICA, : 2:08-CR-431TC

Plaintiff, :

vs. :

FILIKISI HAFOKA and SIALE
ANGILAU,

ORDER GRANTING LEAVE OF
COURT TO FILE A DISMISSAL
OF COUNTS III-VI OF THE
SUPERSEDING INDICTMENT

Defendants.

Based upon the motion of the United States of America, and for good cause appearing, the Court hereby grants leave pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure to allow the United States Attorney to file a dismissal of counts III-VI of the Superseding Indictment in the above-referenced matter.

IT IS SO ORDERED.

DATED this 4th day of May, 2009.

BY THE COURT:

Tena Campbell

TENA CAMPBELL

United States District Court Judge

MARY C. CORPORON #734
Attorney for Defendant
CORPORON & WILLIAMS, P.C.
405 South Main Street, Suite #700
Salt Lake City, Utah 84111
Telephone: (801) 328-1162
Facsimile: (801) 328-9565

IN THE UNITED STATES DISTRICT COURT,
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	ORDER CONTINUING TRIAL
	:	
Plaintiff,	:	
	:	
-vs-	:	Case No. 2:08-CR-00528
	:	
ALEX RAY COTA,	:	Judge Dee Benson
	:	Magistrate Judge
Defendant.	:	

Based upon Defendant's Motion to Continue Trial and for good cause appearing;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the trial previously scheduled to begin on May 26, 2009, and following is continued. A trial is set for Monday, July 27, 2009 at 8:30 a.m. The time from the previous date to the new date shall be excluded from the time allowed for trial under the Speedy Trial Act, 18 U.S.C., § 3161, due to the need to maintain continuity of counsel.

The Court specifically finds that the ends of justice will be served by the granting of such continuance and that such action outweighs the best interest of the public and the defendant in a speedy trial.

DATED this 5 day of May, 2009.

BY THE COURT:

A handwritten signature in black ink that reads "Dee Benson". The signature is written in a cursive, flowing style. The first name "Dee" is written with a large, stylized 'D' and a small 'e'. The last name "Benson" is written with a large 'B' and a long, sweeping tail that extends to the right.

HONORABLE DEE BENSON
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused the foregoing to be provided to:

BRETT L. TOLMAN
ADAM S. ELGGREN
Assistant United States Attorney
Office of the U.S. Attorney
185 South State, #400
Salt Lake City, Utah 84111

on the 23rd day of *April*, 2009.

/s/ Jennifer Witherspoon

BRETT L. TOLMAN, United States Attorney (#8821)
WILLIAM K. KENDALL, Assistant United States Attorney (#7906)
Attorneys for the United States of America
185 South State Street, Suite 300
Salt Lake City, Utah 84111
Telephone: 801.524.5682

FILED
RECEIVED
U.S. DISTRICT COURT
2009 MAY 04 2:17
OFFICE OF
JUDGE TENA CAMPBELL
BY: _____
DEPUTY CLERK

FILE
U.S. DISTRICT
2009 MAY -5 F
DISTRICT OF U
BY: _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	Case No. 2:08CR604TC
	:	
Plaintiff,	:	ORDER GRANTING LEAVE OF
vs.	:	COURT TO FILE A DISMISSAL
	:	
JEFFREY MICHAEL EMERY,	:	Honorable Tena Campbell
	:	
Defendant.	:	

Based upon the motion of the United States of America, the Court hereby grants
leave under Rule 48(a) of the Federal Rules of Criminal Procedure for the dismissal of the
Indictment.

DATED this 5th day of May, 2009.

BY THE COURT:

Tena Campbell

HONORABLE TENA CAMPBELL
United States District Court Judge

UNITED STATES DISTRICT COURT
U.S. DISTRICT COURT

Central

District of

Utah

UNITED STATES OF AMERICA

2009 MAY -5 A 10:46

JUDGMENT IN A CRIMINAL CASE

V.

DISTRICT OF UTAH

Rene Cecilo Constnate

BY:

DEPUTY CLERK

Case Number:

DUTX 2:08CR00637-001 TC

USM Number:

13970-081

Michael Jaenish

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) One of the Indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 USC § 751(a)	Escape		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

04/29/2009

Date of Imposition of Judgment

Tena Campbell

Signature of Judge

Tena Campbell

Chief, United States District Court Judge

Name and Title of Judge

5-2-2009

Date

DEFENDANT: Rene Cecilo Constante
CASE NUMBER: 2:08CR00637-001 TC

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

18 Months

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Rene Cecilo Constante
CASE NUMBER: 2:08CR00637-001 TC

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

36 Months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Rene Cecilo Constante
CASE NUMBER: 2:08CR00637-001 TC

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant will submit to drug/alcohol testing as directed by the probation office, and pay a one-time \$115 fee to partially defray the costs of collection and testing.
2. The defendant shall participate in a substance-abuse evaluation and/or treatment under a co-payment plan as directed by the probation office. During the course of treatment, the defendant shall not consume alcohol nor frequent any establishment where alcohol is the primary item of order.
3. The defendant shall submit his person, residence, office, or vehicle to a search, conducted by the probation office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
4. The defendant shall not have any contact with any member or associate of a criminal street gang/security threat group either in person, by mail, by phone, by e-mail, by third person, or by any other method.
5. The defendant shall not possess material which gives evidence of criminal street gang/security threat group involvement or activity.
6. The defendant shall not receive any new tattoos associated with a criminal street gang/ security threat group.
7. The defendant shall not wear clothing or other items that may be identified with a criminal street gang/security threat group.
8. The defendant shall participate in domestic violence/anger-management counseling as directed by the probation office.
9. The defendant shall participate in a location monitoring program for a period of 180 days, which may include electronic or non-electronic means, i.e., global positioning satellite tracking (GPS), radio frequency, voice verification tracking, or other services as determined by the probation office. The defendant is restricted to his residence at all times, except for activities pre-approved by the probation office. The defendant shall pay \$___ per day- (Amount to be determined by the probation office.) , to partially defray the costs of the program.

DEFENDANT: Rene Cecilo Constante
CASE NUMBER: 2:08CR00637-001 TC

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	--------------------	----------------------------	-------------------------------

TOTALS	\$ _____	\$ _____
--------	----------	----------

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Rene Cecilo Constante
CASE NUMBER: 2:08CR00637-001 TC

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- ☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10

are the
Statement of Reasons,
which will be docketed
separately as a sealed
document

UNITED STATES DISTRICT COURT
U.S. DISTRICT COURT

Central

District of

Utah

UNITED STATES OF AMERICA

V.

DISTRICT OF UTAH

Anthony Samora

DEPUTY CLERK

Case Number:

DUTX 2:08CR00639-001 TC

USM Number:

15767-081

Heather Harris

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) One of the Indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC § 2113(a)	Credit Union Robbery		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

04/30/2009

Date of Imposition of Judgment

Tena Campbell

Signature of Judge

Tena Campbell

Chief, United States District Court Judge

Name and Title of Judge

5-2-2009

Date

DEFENDANT: Anthony Samora
CASE NUMBER: 2:08CR00639-001 TC

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

40 Months

☒ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends the defendant participate in the RDAP Treatment Program. The Court also recommends the defendant serve his sentence at a medical facility where he can receive treatment for any medical conditions.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Anthony Samora
CASE NUMBER: 2:08CR00639-001 TC

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

36 Months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Anthony Samora
CASE NUMBER: 2:08CR00639-001 TC

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant will submit to drug/alcohol testing, as directed by the USPO, and pay a one-time \$115 fee to partially defray the costs of collection and testing.
2. The defendant shall participate in a substance-abuse evaluation and/or treatment under a co-payment plan as directed by the probation office. During the course of treatment, the defendant shall not consume alcohol nor frequent any establishment where alcohol is the primary item of order.
3. The defendant shall not possess or consume alcohol.
4. The defendant shall submit his person, residence, office or vehicle to a search, conducted by a USPO at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

DEFENDANT: Anthony Samora
CASE NUMBER: 2:08CR00639-001 TC

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$ 45.00

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☒ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Mountain America Credit Union 1225 South Redwood Road Salt Lake City, UT 84104	45.00	45.00	

TOTALS	\$ <u>45.00</u>	\$ <u>45.00</u>
--------	-----------------	-----------------

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Anthony Samora
CASE NUMBER: 2:08CR00639-001 TC

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
The Court orders Restitution in the amount of \$45.00 which is due immediately.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10

are the
Statement of Reasons,
which will be docketed
separately as a sealed
document

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

RICKIE L. REBER,	)	O R D E R
)	
Petitioner,)	
	)	Case No. 2:08-CV-50 TS
v.)	
)	
A. LYNN PAYNE et al.,	)	District Judge Ted Stewart
)	
Respondents.	)	Magistrate Judge Paul Warner

IT IS HEREBY ORDERED that Petitioner has thirty (30) days in which to reply to the State's response to his habeas corpus petition.

IT IS SO ORDERED.

DATED this 4th day of May, 2009.

BY THE COURT:



PAUL M. WARNER
United States Magistrate Judge

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH CENTRAL DIVISION**

Travis Chidester,

vs.

Michael J. Astrue,

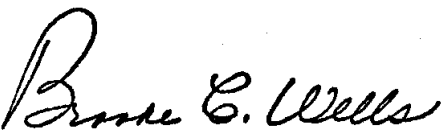
Defendant.

ORDER TO SHOW CAUSE

Case No. 2:08-cv-572 BCW

There has been no activity in this case since December 23, 2008. Plaintiff is hereby ordered to show cause why the above captioned case should not be dismissed. Plaintiff is directed to respond in writing within 10 days from the date of this order and inform the Court of the status of the case and intentions to proceed. Failure to do so will result in dismissal of the case.

Dated this 4th day of May, 2009.

By 

Brooke C. Wells
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

EUGENE K. MCCRARY,)	
)	
Petitioner,	)	Case No. 2:08-CV-600 JTG
)	
v.	)	Magistrate Judge Thomas Greene
)	
STEVEN TURLEY et al.,	)	O R D E R
)	
Respondents.	)	Magistrate Judge David Nuffer

IT IS HEREBY ORDERED that Petitioner has thirty days in which reply to the State's response to his habeas corpus petition.

DATED this 5th day of May, 2009.

BY THE COURT:



DAVID NUFFER
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
CENTRAL DIVISION, DISTRICT OF UTAH

TODD SHARLOW,	:	Civil No. 2:08-CV-00605TC
Plaintiff,	:	
vs.	:	ORDER REQUIRING IN CAMERA REVIEW
	:	
THE BOC GROUP, INC, and BOC, INC. doing business together as BIC GASES, and REED HURST TRUCKING, INC.,		JUDGE TENA CAMPBELL MAGISTRATE JUDGE BROOKE C. WELLS
Defendants.		

Oral arguments on Defendant The BOC Group and BOC, Inc.'s, (collectively known as BOC, LLC or "BOC") motion to compel responses to its interrogatories and to execute release authorizations¹ was heard on April 30, 2009, before Magistrate Judge Brooke Wells. Defendant Reed Hurst Trucking, Inc. joined in BOC's motion.² At the conclusion of the hearing, the court ruled that application of the "most significant relationship"³

¹Docket no. 10.

²Docket no. 15.

³When resolving choice of law for tort claims, Utah applies the "most significant relationship" approach under which

approach required that Utah privilege law should control the parties' dispute. The court took the remaining issues surrounding the motion to compel under advisement. Having reviewed the parties' oral arguments and written memorandum, the Court now rules as set forth herein and requests that plaintiff file certain medical records, related written summaries and employment information with the court for an *in camera* review.

Through its pending motion BOC seeks Plaintiff Todd Sharlow's: (1) medical treatment records⁴ and medical billing records⁵ for the ten year period prior to the date of the accident; (2) pharmacy records for the five year period prior to the date of the accident;⁶ and (3) release authorizations to facilitate the release of his medical and employment records.

Utah Rule of Evidence 506(d) provides an exception to the general physician-patient privilege "[a]s to any communication

consideration is taken of several factors in order to determine what substantive law should apply. Rowe v Albertsons Inc., 116 Fed. Appx. 171, 2004 U.S. App. LEXIS 20959 (10th Cir.). Those factors include, "(a) the place where the injury occurred, (b) the place where the conduct causing the injury occurred, (c) the domicile, residence, nationality, place of incorporation and place of business of the parties, and (d) the place where the relationship, if any, between the parties is centered." Id. (quoting, Restatement (Second) Conflict of Laws § 145(2) (1971)).

⁴Docket no. 10, Attachment Exhibit 2, Interrogatory 10.

⁵Docket no. 10, Attachment Exhibit 2, Interrogatory 12.

⁶Docket no. 10, Attachment Exhibit 2, Interrogatory 11.

relevant to an issue of the physical, mental or emotional condition of the patient in any proceeding in which that condition is an element of any claim or defense.”⁷ Importantly however, Rule 506(d) creates only a limited waiver of privilege, and the mere filing of a personal injury case does not place all of Plaintiff’s medical information at issue.⁸

In an effort to balance Plaintiff’s right to privacy with the defendants’ right to discover relevant information, the Court is hereby ordering Plaintiff to submit the following for an *in camera* review:

(1) A list and accompanying description from the last ten (10) years of Plaintiff’s pre-existing chronic illnesses and conditions that are, or could be perceived as being, relevant to this action and Plaintiff’s future earning capacity.

(2) A statement of fact describing Plaintiff’s termination, if any, or reason for leaving his employment for the past 10 years.

(3) Plaintiff’s counsel is requested to provide an affidavit in support of the above mentioned information verifying that such information is true and correct to the best of their knowledge, and verifying that counsel’s review of medical and employment records reveals all information consistent with the court’s

⁷Utah Rules of Evidence, 506(d).

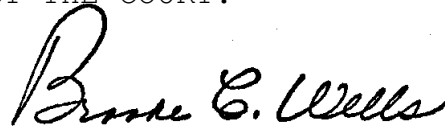
⁸Rich v Grover, 2008 WL 27893188 (D. Utah).

request.

Counsel is hereby requested to submit the above noted information within thirty (30) days of the date of this Order. Subsequent thereto, the Court will review the information provided *in camera* and issue a final Ruling and Order.

DATED this __ day of May, 2009.

BY THE COURT:

A handwritten signature in black ink, reading "Brooke C. Wells". The signature is written in a cursive style with a large, looping initial 'B'.

Brooke C. Wells
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

CHARLES "PETE" ULIBARRI,	)	O R D E R
Petitioner,)	
v.	)	Case No. 2:08-CV-628 DAK
STEVEN TURLEY,)	
Respondent.	)	District Judge Dale A. Kimball
	)	Magistrate Judge Paul Warner

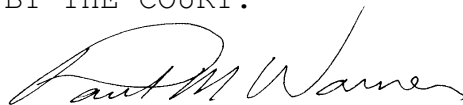
Petitioner, Charles "Pete" Ulibarri, filed an amended *habeas corpus* petition.¹

IT IS HEREBY ORDERED that, by June 18, 2009, Respondent must respond to Petitioner's arguments.² The Clerk of Court must serve upon Respondent copies of this order and the petition. (See File Entry # 5.)

IT IS SO ORDERED.

DATED this 5th day of May, 2009.

BY THE COURT:



PAUL M. WARNER
United States Magistrate Judge

¹ See 28 U.S.C.S. §§ 2241, 2254 (2008).

² The Court notes that untimeliness has been ruled by the Tenth Circuit to be an affirmative defense. See *Kilgore v. Attorney Gen.*, No. 07-1014, 2008 WL 638727, at *1 (10th Cir. Mar. 11, 2008).

Timothy C. Houpt (USB #1543)
Lewis M. Francis (USB #6545)
Preston P. Frischknecht (USB #11286)
JONES, WALDO, HOLBROOK & McDONOUGH
170 South Main Street, Suite 1500
Salt Lake City, Utah 84101
Telephone: (801) 521-3200
Fax: (801) 328-0537
thoupt@joneswaldo.com
lfrancis@joneswaldo.com
pfrischknecht@joneswaldo.com

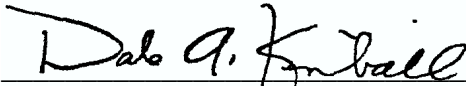
Attorneys for Plaintiff Unishippers Global Logistics, LLC

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNISHIPPERS GLOBAL LOGISTICS,	:	
LLC, a Delaware Limited Liability	:	ORDER GRANTING STIPULATED
Company,	:	MOTION FOR EXTENSION OF TIME
	:	
Plaintiff,	:	Civil No. 2:08-CV-894
vs.	:	
	:	Judge Dale A. Kimball
DHL EXPRESS (USA), INC., an Ohio	:	
Corporation,	:	
	:	
Defendant.	:	
	:	

For good cause appearing and pursuant to the stipulation of the parties, IT IS HEREBY ORDERED that Plaintiff Unishippers Global Logistics, LLC (“Unishippers”)’s time for responding to the Unishippers Franchisees’ Motion to Consolidate, Docket No. 84, shall be extended until Friday, May 8, 2009.

DATED 5th day of May, 2009.



Judge Dale A. Kimball

John A. Anderson (4464)
jaanderson@stoel.com
STOEL RIVES LLP
201 South Main Street, Suite 1100
Salt Lake City, Utah 84111
Telephone: (801) 328-3131
Fax: (801) 578-6999

Attorneys for Defendant and Third-Party Plaintiff
Motive Power, Inc.

**IN THE UNITED STATES DISTRICT COURT, DISTRICT OF UTAH
CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

UNION PACIFIC RAILROAD
COMPANY, a Delaware corporation,
UTAH RAILWAY COMPANY, a Utah
corporation and MOTIVE POWER, INC.,
a Delaware corporation,

Defendants.

MOTIVE POWER, INC., a Delaware
corporation,

Third-Party Plaintiff,

v.

ENGINE SYSTEMS, INC., a Delaware
corporation,

Third-Party Defendant.

**ORDER PERMITTING AMENDMENT
OF THIRD-PARTY COMPLAINT**

Case No. 2:08-cv-903

Judge Ted Stewart

Magistrate Judge C. Brooke Wells

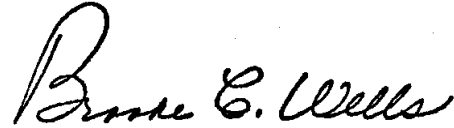
Third-Party Plaintiff Motive Power, Inc. and General Electric Company (“GE”), acting through its Transportation Business Operation, having stipulated pursuant to Rule 15 of the Federal Rules of Civil Procedure to substitute GE in place of Third-Party Defendant Engine Systems, Inc., and good cause appearing,

IT IS HEREBY ORDERED that General Electric Company, acting through its

Transportation Business Operation, is hereby substituted as a Third-Party Defendant in place of Engine Systems, Inc., including the caption, and that all allegations made in the Third-Party Complaint regarding Engine Systems, Inc. are deemed now to be made with respect to Third-Party Defendant GE.

DATED this ___5___ day of May, 2009.

BY THE COURT:

A handwritten signature in black ink, reading "Brooke C. Wells". The signature is written in a cursive, flowing style.

Brooke C. Wells
United States Magistrate Judge

APPROVED AS TO FORM:

STOEL RIVES, LLP

/s/ John A. Anderson

John A. Anderson

Attorneys for Defendant and Third-Party
Plaintiff Motive Power, Inc.

SNELL & WILMER, LLP

(By Permission)

/s/ Tracy H. Fowler

Tracy H. Fowler

Attorneys for Third-Party Defendant
General Electric Company

CERTIFICATE OF SERVICE

I, John A. Anderson, hereby certify that I have caused to be served all counsel in this action with a copy of, **ORDER PERMITTING AMENDMENT OF THIRD-PARTY COMPLAINT**, by email and/or via hand-delivery and/or mailing a copy of the same by United States Mail, postage prepaid, on the 5th day of May, 2009, to the following address(es):

Tyler L. Murray
Assistant United States Attorney
United States Attorney's Office
185 South State Street, Suite 300
Salt Lake City, Utah 84111
tyler.murray2@usdoj.gov

Reha Deal
Union Pacific Railroad Company
280 South 400 West, Suite 250
Salt Lake City, Utah 84101
rkdeal@up.com

Kenneth W. Yeates
Berman & Savage, P.C.
170 South Main Street, Suite 500
Salt Lake City, Utah 84101
kyeates@sywlaw.com

/s/ John A. Anderson

MARY C. CORPORON #734
Attorney for Defendant
CORPORON & WILLIAMS, P.C.
405 South Main Street, Suite #700
Salt Lake City, Utah 84111
Telephone: (801) 328-1162
Facsimile: (801) 328-9565

IN THE UNITED STATES DISTRICT COURT,
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	ORDER CONTINUING TRIAL
	:	
Plaintiff,	:	
	:	
-vs-	:	Case No. 2:09 CR 00019
	:	
JAMES FRANCES MARTENY,	:	Judge Dee Benson
	:	Magistrate Judge
Defendant.	:	

Based upon Defendant's Motion to Continue Trial and for good cause appearing;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the trial previously scheduled on June 8, 2009, and following, is continued. A new trial is set for 8/10/2009 at 8:30 a.m. The time from the previous date to the new date shall be excluded from the time allowed for trial under the Speedy Trial Act, 18 U.S.C., § 3161, due to the need to maintain continuity of counsel.

The Court specifically finds that the ends of justice will be served by the granting of such continuance and that such action outweighs the best interest of the public and the defendant in a speedy trial.

DATED this 5 day of May 2009.

BY THE COURT:

A handwritten signature in black ink that reads "Dee Benson". The signature is written in a cursive, flowing style. The "D" is large and loops around the "ee". The "Benson" part is also cursive, with the "B" being a simple loop and the "son" ending in a small flourish.

HONORABLE DEE BENSON
United States District Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused the foregoing to be provided to:

BRETT L. TOLMAN
TIMOTHY B. BARNES
Assistant United States Attorney
Office of the U.S. Attorney
185 South State, #400
Salt Lake City, Utah 84111

on the 4th day of May, 2009.

/s/ Jennifer Witherspoon

KEITH C. BARNES (7136)
BARNES LAW OFFICES, P.C.
415 North Main, Suite 303
Cedar City, UT 84721
Telephone: (435) 586-6999
Fax: (435) 586-1315

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

THE UNITED STATES OF AMERICA,)	
)	
Plaintiff,	)	ORDER TO CONTINUE
v.	)	SENTENCING HEARING
)	
TRISTEN ZANE GUBLER,)	
	)	Case No. 2:09-CR-00069-001-TS
Defendant.	)	Honorable Judge Ted Stewart


Based upon the motion of the Defendant and for good cause appearing,

IT IS HEREBY ORDERED:

1. The Sentencing Hearing in this matter, presently set for July 30, 2009, at 2:00 p.m., be continued to August 20, 2009, at 3:00 p.m.

DATED this 5th day of May, 2009.

BY THE COURT:



TED STEWART
United States District Court Judge

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MAY 05 2009

OFFICE OF
JUDGE TENA CAMPBELL

UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

RECEIVED CLERK

FILED
U.S. DISTRICT COURT

MAY 04 2009

U.S. DISTRICT COURT

2009 MAY -5 P 2:17

BY: _____
DEPUTY CLERK

Amber Smith,
Plaintiff

v.

Church, et al.,
Defendant

:
:
: ORDER FOR PRO HAC VICE ADMISSION
:
:

: Case Number 2:09-cv-106TC

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for the admission pro hac vice of Paul Reynaga in the United States District Court, District of Utah in the subject case is GRANTED.

Dated: this 5th day of May, 20 09.

Tena Campbell

U.S. District Judge